

# New Hanover County



## SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

## **Article VI. – Erosion and Sedimentation Control**

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## **ARTICLE VI. EROSION AND SEDIMENTATION CONTROL**

### AN ORDINANCE TO PROVIDE FOR THE CONTROL OF SOIL EROSION AND SEDIMENTATION

\*State law reference: Sedimentation Pollution Control Act of 1973, G.S. 113A-50 et seq.; authority to adopt ordinances to establish and enforce erosion and sediment control program, G.S. 113A-60 – G.S. 113A – 66 et seq.:

#### **Section 23-231 Title**

This Ordinance may be cited as the “New Hanover County Soil Erosion and Sedimentation Control Ordinance.”

#### **Section 23-232 Purposes**

This Ordinance is adopted for the purpose of:

- (1) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
- (2) Establishing procedures through which these purposes can be fulfilled.

#### **Section 23-233 Definitions**

The following words, terms, and phrases, as used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accelerated erosion* means any increase over the rate of natural erosion as a result of land-disturbing activity.

*Act* means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

*Adequate erosion control measures, structure, or device* means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

*Affiliate* means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

*Being conducted* means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

*Borrow* means fill material which is required for on-site construction and is obtained from other locations.

*Buffer zone* means the strip of land adjacent to a lake or natural watercourse.

*Coastal Counties* means the following Counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.

*Commission* means the North Carolina Sedimentation Control Commission.

*Common Plan of Development* means a contiguous area where multiple separate and distinct land-disturbing activities may be taking place at different times and on different schedules under one common plan. The "Common Plan" of development or sale indicates construction activities are planned to occur on a specific plot regardless of ownership of the parcels.

*Completion of construction or development* means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

*Department* means the North Carolina Department of Environmental, Quality and Natural Resources.

*Director* means the Director of the Division of Energy, Mineral, and Land Resources of the N.C. Department of Environmental Quality and Natural Resources.

*Discharge point* means that point at which storm water runoff leaves a tract of land.

*District* means the New Hanover County Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

*Energy dissipater* means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

*Erosion* means the wearing a way of land surfaces by the action of wind, water, gravity, or any combination thereof.

*Ground cover* means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

*High quality water* means those classified as such in 15A NCAC 2B.0101(e)(5) - General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(c).

*High quality water (HQW) zones* means, areas in the Coastal Counties, that are within 575 feet of High Quality Waters; and for the remainder of the State, areas that are within one mile and draining to HQW's.

*Lake or natural watercourse* means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

*Land-disturbing activity* means any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

*Local government* means any County, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.

*Natural erosion* means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

*Parent* means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

*Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

*Person conducting land-disturbing activity* means any person who may be held responsible for a violation unless expressly provided otherwise by this Ordinance, the Act or any order adopted pursuant to this Ordinance or the Act.

*Person responsible for the violation* means:

(1) The developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; or

(2) The landowner or person in possession or control of the land that has directly or indirectly allowed the land-disturbing activity, or has benefited from it or failed to comply with a duty imposed by any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

*Phase of grading* means one of two types of grading: rough or fine.

*Plan* means an erosion and sedimentation control plan.

*Sediment* means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

*Sedimentation* means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

*Siltation* means sediment resulting from accelerated erosion which is settle able or removable by properly designed, constructed and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

*Storm drainage facilities* means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.

*Storm water runoff* means the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.

*Subsidiary* means an affiliate that is, directly or indirectly through one or more intermediaries, controlled by another person.

*Ten-year storm* means the storm water runoff resulting from precipitation of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

*Tract* means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

*Twenty-five-year storm* means the storm water runoff resulting from precipitation of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

*Uncovered* means the removal of ground cover from, on, or above the soil surface.

*Undertaken* means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

*Velocity* means the average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

*Waste* means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.

*Working days* means days exclusive of Saturday and Sunday and Federal and State holidays unless work is being conducted on these holidays, during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

### **Section 23-234 Scope and Exclusions**

(a) This Ordinance shall apply to land-disturbing activities within the following territorial jurisdiction of New Hanover County and to the extraterritorial jurisdiction of New Hanover County as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.

(b) Notwithstanding the general applicability of this Ordinance to all land-disturbing activity, this Ordinance shall not apply to the following types of land-disturbing activity:

(1) including the production and activities relating or incidental to the production of crops, grains, fruits vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:

- (i) forage and sod crops, grain and feed crops, tobacco, cotton and peanuts;
- (ii) dairy animals and dairy products;
- (iii) poultry and poultry products;
- (iv) livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules and goats, including the breeding and grazing of any or all such animals;
- (v) bees and apiary products;
- (vi) fur producing animals;
- (vii) mulch, ornamental plants, and other horticultural projects. For purposes of this section, "mulch," means substances composed primarily of plant remains or mixtures of such substances.

(2) An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices) as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this Ordinance shall apply to such activity and any related land-disturbing activity on the tract.

(3) An activity for which a permit is required under the Mining Act of 1971; Article 7 of Chapter 74 of the General Statutes;

(4) A land-disturbing activity over which the State has exclusive regulatory jurisdiction and provided in G.S. 113A-56(a);

(5) An activity which is essential to protect human life during an emergency;

(6) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigations to offset impacts permitted under Section 404 of the Clean Water Act and;

(7) Activities undertaken pursuant to National Resources Conservation Service Standards to restore the wetland functions of a converted wetland defined in Title 7 Code of Federal Regulation Sec. 12.2.

### **Section 23-235 General Requirements**

(a) *Plan approval required.* No person shall undertake any land-disturbing activity subject to this Ordinance which uncovers more than one acre, without first having an erosion control Plan approved by the County. No land-disturbing activity may be initiated until the County is notified of the date that the land-disturbing activity will begin.

(b) *Protection of property.* Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

(c) *More restrictive rules shall apply.* Whenever conflicts exist between Federal, State, or local laws, Ordinances, or rules, the more restrictive provision shall apply.

(d) *Plan Approval Exceptions.* Notwithstanding the general requirement to obtain a Plan approval prior to undertaking land-disturbing activity, a Plan approval shall not be required for land-disturbing activity, that does not exceed 43,560 square feet in surface area and is not considered a part of a common plan of development. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

(e) *Building permits.* No building permit, unless excluded by section 23-247 shall be issued without an erosion control sign-off pursuant to G.S. 153A-357 and 160A-417 as amended.

(f) *Inspections.* Any and all applicable intermediate inspections may be held in any trade (building, mechanical, electric, and/or plumbing) if any land-disturbing activity, on a tract, including single family residences, is found not to be in compliance with any part of this Ordinance.



(g) *Building finals.* Building finals and/or certificates of occupancy may not be issued if any land-disturbing activity, including single-family residences, is found not to be in compliance with any part of this Ordinance.

### **Section 23-236 Basic Control Objectives**

(a) An erosion and sedimentation control Plan may be disapproved pursuant to Section 23-248 if the Plan fails to address the following control objectives:

(1) *Identify critical areas.* On-site areas which are subject to severe erosion and off-site areas, which are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention.

(2) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

(3) *Limit exposed area.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

(4) *Control surface water.* Surface water runoff originating updrain of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(5) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.

(6) *Manage storm water runoff.* When the increase in the velocity of storm water runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, Plans are to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream. Plans are to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(b) Preconstruction conferences are optional. You should notify the county when the initial erosion control measures are installed.

(c) No person may initiate a land-disturbing activity before notifying the County of the date that land-disturbing activity will begin.

(d) A Plan approval issued under this Ordinance shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A copy of the approved Plan shall be kept on file at the job site.

## **Section 23-237 Mandatory Standards for Land Disturbing Activity**

No land-disturbing activity subject to the control of this Ordinance shall be undertaken except in accordance with the following mandatory standards:

### *(1) Buffer Zone*

(a) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(b) Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25% of the strip nearest the land-disturbing activity containing natural or artificial means of confining visible siltation.

*(2) Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical restraints. In any event, slopes left exposed shall, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.

*(3) Fill material.* Unless a permit from the Department's Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.

*(4) Ground cover.* Whenever land-disturbing activity that will disturb more than one acre undertaken on a tract, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in Section 23-238(b)(5) of this Ordinance, provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of construction or development whichever period is shorter.

(5) *Prior plan approval.* No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control Plan for the activity has been both filed with and approved by the County. The land-disturbing activity shall be conducted in accordance with the approved Plan once the Plan has been approved.

### **Section 23-238 Design and Performance Standards**

(a) Except as provided in subsection (b)(2) of this section, erosion and sedimentation control measures, structures and devices shall be planned, designed and constructed as to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.

(b) In High Quality Water (HQW) zones, the follow design standards shall apply:

(1) Uncovered areas in HQW zones shall be limited at any time to a maximum total area of twenty (20) acres within the boundaries of the tract. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

(2) Erosion and sedimentation control measures, structures and devices within HQW zones shall be so planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this State or the United States or any generally recognized organization or association.

(3) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.04 millimeter) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this State or the United States or any generally recognized organization or association.

(4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontals to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(5) Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

### **Section 23-239 Storm Water Outlet Protection**

(a) *Intent.* Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.

(b) *Performance standards.* Persons shall conduct land-disturbing activity so that the post-construction velocity of the ten-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

(1) The velocity established by the Maximum Permissible Velocities table in Subsection (e) of this section; or

(2) The velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If conditions (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the “prior-to-development” velocity by 10%.

(c) *Acceptable management measures.* Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The County recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

(1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;

(2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high-velocity paved sections;

(3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge; These may range from simple rip-rapped sections to complex structures;

(4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and

(5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity;

(d) *Exceptions.* This rule shall not apply where it can be demonstrated to the County that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

(e) *Maximum permissible velocities.* The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<b>Maximum Permissible Velocities Table</b>		
<b>Material</b>	<b>F. P. S.</b>	<b>M. P. S</b>
Fine sand (non-colloidal)	2.5	0.8
Sandy loam (non-colloidal)	2.5	0.8
Silt loam (non-colloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (non-colloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (non-colloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Course gravel (non-colloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source. Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

**Section 23-240 Borrow and Waste Areas**

When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Department’s Division of Waste Management shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land- disturbing activity.

### **Section 23-241 Access and Haul Roads**

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

### **Section 23-242 Operations in Lakes, Natural Watercourses**

Land-disturbing activity in connection with construction in, on, over or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristic.

### **Section 23-243 Responsibility for Maintenance**

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan, or any provision of this Ordinance, the Act, or any order adopted pursuant to the Ordinance or the Act. After site development, the land owner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

### **Section 23-243.5 Restoration of Areas Affected by Failure to Comply**

The County may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this Ordinance.

### **Section 23-244 Additional Measures**

Whenever the County determines that significant erosion and sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

### **Section 23-245 Areas Not Otherwise Covered**

Notwithstanding previous provisions, when it is determined that severe off-site erosion and/or sedimentation has occurred as a result of any land-disturbing activity, regardless of the size of the site, and despite application and maintenance of protective practices, remedial action shall be taken within a reasonable time period after notification. A notice shall be served upon that person by any means authorized under G.S. 1A-1 Rule 4. The notice shall specify a date by which the person must comply with the Ordinance or rules adopted by this Ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided by this Ordinance.

### **Section 23-246 Existing Uncovered Area**

(a) All uncovered areas existing on the effective date of this Ordinance, which resulted from land-disturbing activity which exceed one acre, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with ground cover or other protective measures, structures or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(b) The County shall serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this Ordinance, a rule or order adopted or issued pursuant to the Act by the Commission or by the County. The notice to comply shall be served by any means provided by GS 1A-1, Rule 4. The notice will set forth the measures needed to comply, with the Act, the Ordinance, or any rule or order issued pursuant to the Act by the Commission or by the County will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

(c) The County reserves the right to require preparation and approval of an erosion control Plan in any instance where erosion control measures are required.

(d) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

### **Section 23-247 Permits**

(a) No person shall undertake any land disturbing activity subject to this Ordinance without first obtaining a permit from the County, except that no permit shall be required for any land-disturbing activity:

(1) For the purpose of fighting fires;

(2) For the stock piling of raw or processed sand, stone or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage; or

(3) That does not exceed 43,560 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated. (Note: This exclusion from permits should allow land-disturbing activities for construction of a single-family residence on a single lot, but may not exceed one acre or be part of a common plan of development).

(b) The County may establish a fee schedule for the review and approval of erosion control plans. In establishing the fee schedule, the County shall consider the administrative and personnel cost incurred by the department for reviewing the plans and for related compliance activities.

(c) The permit fees include:

**Residential**

Review Fee: \$200 Review fee for new projects. (Paid at time of application.)  
\$200 Review fees for active projects adding new acreage.  
\$200 Review fees for previously permitted inactive projects with modifications.

Land Disturbance Fee: \$300 per acre disturbed or any increment of an acre.  
Due prior to Plat Recordation. Builders in a subdivision with active permits where the developer previously paid review and land disturbing fees will not owe fees.

**Commercial**

Review fee: \$200 (Paid at time of application.)

Land Disturbance Fee: \$300 per acre disturbed or any increment of an acre.  
Due prior to issuance of Certificate of Occupancy.

**Other**

Review Fee: \$200 (Paid at the time of application.)

Land Disturbance Fee: \$300 per acre or increment of an acre.  
Due prior to issuance of the land disturbing permit.

(d) Permits will expire one year from the date of issue if no construction activity begins on site. If activity ceases on a permitted site for a period of 12 months, the permit will expire.



## **Section 23-248 Erosion and Sedimentation Control Plans**

(a) An erosion control Plan shall be prepared for all land-disturbing activities subject to this Ordinance whenever the proposed activity will disturb more than one acre on a tract. The Plan shall be filed with the County Engineering Department, the New Hanover Soil and Water Conservation District, and for areas outside municipal corporate limits, the County Planning Department, at least 30 days prior to the commencement of the proposed activity.

(b) Persons conducting land-disturbing activity on a tract which covers more than one acres shall file three copies of the erosion control Plan with the County at least 30 days prior to beginning such activity and shall keep another copy of the approved Plan and a posted copy of the permit prominently displayed onsite until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. After approving the Plan, if the County either upon review of such Plan or ~~an~~ inspection of the job site, determines that a significant risk of accelerated erosion or offsite sedimentation exists, the County will require a revised Plan. Pending the preparation of the revised Plan, work shall cease or shall continue under conditions outlined by the appropriate authority.

(c) Erosion control Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principle place of business of the person financially responsible, and of the owner of the land, and any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the Plan, the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance. Except as provided in subsection (d) and (k) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control Plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

(d) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control Plan may be submitted without the written consent of the owner of the land, so long as the owner of the land had been provided prior notice of the project.

(e) The New Hanover Soil and Water Conservation District and the County Planning Department within 20 days of receipt of any Plan, shall review such Plan and submit its comments and recommendations to the County Engineering Department. Failure of the Soil and Water Conservation District and the County Planning Department to submit its comments and recommendations within 20 days or within the prescribed additional time will not delay final action on the Plan.

(f) The County will review each complete Plan submitted to them and within 30 days of receipt. The person submitting the Plan will be notified that it has been approved, approved with modifications, approved with performance reservations, or disapproved. The County shall condition approval of an erosion control plan upon the applicant's compliance with Federal and State Water Quality laws, regulations, and rules. The County shall also disapprove an erosion control plan if implementation of the Plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. Failure to approve, approve with modifications, or disapprove a complete erosion and sedimentation control Plan within 30 days of receipt shall be deemed approval. Disapproval of an erosion control Plan or a revised erosion control Plan must specifically state in writing the reasons for disapproval. The County must approve, approve with modifications, or disapprove a revised Plan within 15 days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved Plan, the County determines that the Plan is inadequate to meet the requirements of this Ordinance, either upon review of such Plan or inspection of the job site determines that a significant risk of accelerated erosion or offsite sedimentation exist, the County shall require a revised Plan to comply with this Ordinance. Pending the preparation of the revised Plan, work shall cease or shall continue under conditions outlined by the appropriate authority.

(g) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for review. The County shall promptly notify the person submitting the Plan that the 30-day time limit for review of the Plan pursuant to subsection (f) of this section shall not begin until a complete environmental document is available for review.

(h) The County shall approve a Plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. The County shall condition approval of Plans upon the applicant's compliance with the Federal and State water quality laws, regulations and rules. Approval assumes the applicant's compliance with the Federal and State water quality laws regulations, and rules.

(i) The Plan required by this section shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the County, on request. The Plan shall contain a schedule for inspections after each phase has been completed.

(j) The county may disapprove an erosion and sedimentation control Plan or disapprove a transfer of a Plan under subsection (k) of this section upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

(1) is conducting or has conducted land-disturbing activity without an approved Plan, or has received notice of violation of a Plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) has failed to pay a civil penalty assessed pursuant to the ~~act~~ Article or a local Ordinance adopted pursuant to this Article by the time the payment is due;

(3) has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local Ordinance adopted pursuant to this Article or;

(4) has failed to substantially comply with State rules or local Ordinances and regulations adopted pursuant to this Article.

For purposes of this subsection (j) an applicant's record or the proposed transferee's record may be considered for only two (2) years prior to the application date.

In the event that an erosion and sedimentation control Plan or transfer of a Plan is disapproved by the county pursuant to subsection, (j) of this section, the County shall notify the Director of the Division of Energy, Mineral, and Land Resources of such disapproval within 10 days of the disapproval. The County shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the Plan was disapproved. Notwithstanding the provisions of Section 23-249(a), the applicant may appeal the local government's disapproval of the Plan directly to the Commission.

(k) The County administering an erosion and sedimentation control program may transfer an erosion and sedimentation control Plan approved pursuant to this section without the consent of the Plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

(1) The County may transfer a Plan if all of the following conditions are met:

(a) The successor-owner of the property submits to the local government a written request for the transfer of the Plan and an authorized statement of financial responsibility and ownership.

(b) The County finds all of the following:

(1) The plan holder is one of the following:

(i) A natural person who is deceased.

(ii) A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.

(iii) A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.

(iv) A person who has sold the property on which the permitted activity is occurring or will occur.

(2) The Plan holder shall comply with all terms and conditions of the Plan until such time as the Plan is transferred.

(3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.

(4) Notwithstanding changes to law made after the original issuance of the Plan, the County may not impose new or different terms and conditions in the Plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the County from requiring a revised plan pursuant to G.S. 113A-54.1 (b).

(l) No person may initiate a land-disturbing activity before notifying the agency that issued the Plan approval of the date that the land-disturbing activity will begin. Preconstruction meetings are optional.

(m) Applications for amendment of an erosion control Plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the County, the land-disturbing activity shall not proceed except in accordance with the erosion control Plan as originally approved.

(n) Any person engaged in land-disturbing activity who fails to file a Plan in accordance with the Ordinance or who conducts a land disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this Ordinance.

(o) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the Plan after each phase of the Plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspections shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control Plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control Plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1

Where inspections are required by Section 23-248 (n) of this Ordinance and G.S. 113A-54.1(e), the following apply:

(i) The person who performs the inspections shall make a record of the site inspection by documenting the following items:

(a) all of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control Plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, that have initially been installed and do not

significantly deviate (as defined in Sub-item (1)(c) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation Plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control Plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control Plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control Plan or if the measure, practices and devices are modified after initial installation;

(b) the completion of any phase of grading for all graded slopes and fills shown on the approved erosion and sedimentation control Plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control Plan or by completing, dating and signing an inspection report;

(c) the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in Sub-item (i)(e) of this Rule) from the approved erosion and sedimentation control Plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control Plan or by completing, dating and signing an inspection report;

(d) that maintenance and repair requirement for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and

(e) any significant deviations from the approved erosion and sedimentation control Plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control Plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended;

(ii) The documentation, whether on a copy of the approved erosion and sedimentation control Plan or an inspection report, shall include the

name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control Plan shall occur on a single copy of the Plan and that Plan shall be made available on the site. Any inspection reports shall also be made available on the site;

(iii) The inspection shall be performed during or after each of the following phases of a Plan:

(a) installation of perimeter erosion and sediment control measures;

(b) clearing and grubbing of existing ground cover;

(c) completion of any phase of grading on slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);

(d) completion of storm drainage facilities;

(e) completion of construction or development; and

(f) quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control Plan has been approved and the agency that approved the Plan has been notified. If the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control Plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion.

### **Section 23-249 Plan Review Appeals**

(a) Except as provided in subsection (b) of this section, the appeal of a disapproval or approval with modifications of a Plan shall be governed by the following provisions:

(1) The disapproval or modification of any proposed erosion control Plan by the County, shall entitle the person submitting the Plan or applying for the permit, to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.

(2) Hearings held pursuant to this section shall be conducted by the County Engineer within ten (10) days after the date of the appeal or request for a hearing.

(3) The County Engineer shall make recommendations to the New Hanover County Board of Commissioners, within ten days (10) after the date of the hearing on any erosion control Plan.

(4) The Board of Commissioners will render its final decision on any Plan upon which a hearing is requested within 30 days of conducting the hearings.

(5) If the Board of Commissioners upholds the disapproval or modification of a proposed Plan following the hearing, the person submitting the Plan shall then be entitled to appeal the Board of Commissioners decision to the State Sedimentation Control Commission as provided in G.S. 113A-61(c) and Title 15A NCAC 4B.0118 (d).

(b) If an erosion control Plan is disapproved pursuant to Section 23-248(h), of this Ordinance- the applicant may appeal the County disapproval of the Plan directly to the State Sedimentation Control Commission.

### **Section 23-250 Inspections and Investigations**

(a) Agents, officials, or other qualified persons authorized by the County, will periodically inspect land-disturbing activity to ensure compliance with the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, and to determine whether the measures required in the Plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of each Plan approval.

(b) If the County determines that a person engaged in land-disturbing activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, or has failed to comply with an approved Plan, a notice of violation shall be served upon that person by any means authorized under in G.S. 1A-1 Rule 4 to give actual notice. The notice shall set forth the measures necessary to achieve compliance with the, Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, specify a reasonable time period within which such measures must be completed, and warn that failure to correct the violation within the time period specified in the notice of violation will result in additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this Ordinance. However, no time period for compliance need be given for failure to submit an erosion control Plan for approval or for willfully obstructing, hampering or interfering with an authorized representative, while in the process of carrying out his official duties. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action may be initiated.

(c) The County shall have power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. No person shall refuse entry or access to any authorized representative or agent who requests entry for purposes of inspection and who presents appropriate credentials;

(d) The County shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

### **Section 23-251 Penalties**

#### *(a) Civil Penalties.*

(1) Any person who violates any of the provisions of this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, or order adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, shall be subject to a civil penalty. The maximum civil penalty amount that the county may assess per is five thousand dollars (\$5,000.00) per calendar day. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. The person alleged to be in violation will be notified of the violation by any means authorized under G.S. 1A-1 Rule 4 to give actual notice. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date of the notice of violation. However, no time period for compliance need be given for failure to submit an erosion control Plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation, and the person abated the continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control Plan is required is twenty-five thousand dollars (\$25,000).

(2) The County Manager or his designee shall determine the amount of the civil penalty to be assessed under this subsection and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. In determining the amount of the penalty the County Manager or his designee shall consider the degree and extent of harm caused by the violation, and the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Ordinance. The County shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4. The notice of assessment shall direct the violator to either pay the civil penalty assessment, or contest the assessment within 30 days after receipt of the notice of assessment, by filing



a written petition for a hearing before the Board of County Commissioners, or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based. Notice of the assessment shall be served by any means authorized under G.S.1A-1, Rule 4 to give actual notice.

(3) Any appeals from the determination of the Board of County Commissioners must be filed with the Superior Court of the County within 30 days following the Board's issuance of its final determination. If payment is not received or equitable settlement reached within 60 days after demand for payment is made, the matter shall be referred to the County Attorney for institution of a civil action in the name of the County in Superior Court where the violation occurred, or the violator's residence or principle place of business. A civil action must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(4) The clear proceeds of civil penalties collected pursuant to this Ordinance shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection cost by each County for the prior fiscal year. (In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected).

(b) *Criminal Penalties.* Any person who knowingly or willfully violates any provision of this Ordinance, or rule or order adopted or issued pursuant to this Ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control Plan is required except in accordance with terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed five thousand dollars (\$5,000.00) per calendar day as provided in G.S. 113A-64.

### **Section 23-252 Injunctive Relief**

(a) Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the County, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of the County in which the violation is occurring or is threatened.

(b) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

**Section 23-253 Severability**

If any section or sections of this Ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

**Section 23-254 Effective Date**

December 16, 2019

**Section 23-255 - 23-280 Reserved.**